

# EXHIBIT 2



## DEPARTMENT OF STATE POLICE TOW SERVICE AGREEMENT

*This Tow Service Agreement contains rules and regulations that a company agrees to comply with to receive a no preference tow listing with the Massachusetts State Police. Compliance with this agreement shall not be construed as a property right.*

*Tow Truck Classifications and other requirements of state police tow providers are governed by State Police General Order TRF-09, as well as, Standard Operating Procedures established by the Commanding Officer of the Division of Field Services. All tow providers must to adhere to any and all requirements of both General Order TRF-09 and Standard Operating Procedures of the Commanding Officer of the Division of Field Services and their contents are incorporated into this agreement.*

### **Disclaimer**

Any person, business or corporate agent thereof, which agrees to provide towing and/or related services shall:

Agree that the Massachusetts State Police is not financially responsible for any direct or indirect action arising from any tow and/or related activity, service or storage, unless specifically agreed to by a Troop Commander.

Any person, business or corporate agent thereof, which agrees to provide towing and/or related services shall indemnify, defend, and hold harmless the Massachusetts State Police from any and all claims arising from the operations and activities of said person, business or corporate agent.

### **Compliance with Agreement**

The applicant agrees, upon application, to comply with the terms and conditions of this Tow Service Agreement. Furthermore, the applicant agrees that failure by the applicant or his/her agents to comply with these terms and conditions shall be cause for immediate removal from the State Police Tow list.

### **Policy**

Public safety is the Department's primary concern and will guide the application of this policy. When authorized to remove vehicles, officers will remove such vehicles to a place of safety in order to ensure the safety and well being of the occupants, the security of the vehicle, and the safe and efficient flow of traffic.

### **Responsibilities of the Station Commander**

The Station Tow Company List shall be divided into three categories:

- **Category I** - Passenger Automobile Towing / Recovery / Service (vehicles <15K GVWR)
- **Category II** - Commercial Vehicle Tow (vehicles >15K GVWR)
- **Category III** - Commercial Vehicle Crash / Recovery / Hazmat

The Station Commander shall appoint a Station Tow Officer to assist with the administration of this policy and maintain all tow agreements and associated documents.

The Station Commander or designee may establish exclusive tow zones during natural or man-made emergencies in order to maximize public and officer safety.

The following procedure shall be followed relative to Tow Company Applications:

- The Station Commander shall accept any written request for inclusion on the Station Tow Company List. Each written request shall be recorded and marked with date and time received and placed on file with the tow officer.
- The Station Commander shall review the Station Tow Company List: annually, whenever a tow company has been voluntarily or involuntarily removed from the list, or any time they deem necessary. Following this review, the Station Commander may open the list to any qualified tow company that has requested inclusion. In the event the Station Commander deems it necessary to add a new tow company, an application package will be provided to any company with a request on file. This package must be completed and returned to the Station Commander within 60 days after receipt of the package.
- Upon receipt of an application, the Station Commander shall review the application for completeness. If complete, the Station Commander shall thereafter order an inspection of the applicant tow company. The Station Tow Officer in conjunction with the State Police Commercial Vehicle Enforcement Section (CVES) shall perform the inspection.
- The inspection shall determine if the information contained in the application package is accurate, complete, and in conformance with the requirements of this procedure.
- If the tow company is not in compliance, the company will be notified of the deficiencies, the application will be closed and no further action shall be taken.
- If the tow company is in compliance, the company shall be considered for placement on the Station Tow Company List. If the Station Commander elects to place the tow company on the list, the Station Commander shall ensure that the SP 357 - Department of State Police Tow Service Agreement is properly executed and placed on file.

The Station Commander/Station Tow Officer shall inspect all tow trucks and storage facilities annually. The Station Commander or the Station Tow Officer may conduct additional inspections without notice during normal business hours.

Inspections may also include, but are not limited to, examination of records of State Police tows, driver qualification files, required equipment, proof of insurance, and documentation required by the Department of Telecommunications and Energy or the Federal Motor Carrier Safety Administration. A tow company's refusal to grant access or to provide documents is cause for immediate removal from the Station Tow Company List.

The station of jurisdiction where the tow company is located shall be responsible for conducting all inspections of that company, regardless of their appearance on different lists.

The Station Tow Officer shall maintain a log of complaints against tow companies filed by officers or members of the public.

- In the event that it is alleged that a tow company has violated a section or provision of this agreement, General Order TRF-09, or a Division Commanders Standard Operating Procedure, the Station Commander shall order an investigation. The tow company shall be advised, in writing, if a determination is made that a violation has occurred. This notification will state the penalty assessed by the Station Commander, which will take effect seven days after the official notification. An exception to the seven-day notice will be allowed in the case of an emergency termination approved by the Trooper Commander or his designee. All notices of termination and/or suspensions shall state the circumstances of the alleged deficiency or violation.
- Station Commanders may also suspend or permanently remove any tow company for: violation or non-compliance with Massachusetts General Laws, Federal Laws or regulations, engaging in criminal activities or conduct, being a subject of a criminal investigation, or any other egregious misconduct or actions. The removal or suspension may be appealed to the Troop Commander.
- The tow company may make a written appeal of any assessed penalty to the Troop Commander within seven business days of the official notification.
- All Troop Commanders / Station Commanders shall honor all action taken against a particular tow company by other Station Commanders and Troop Commanders.
- The Station Commander will follow the penalty schedule listed below for the enumerated offenses. Subsequent offense penalties shall be assessed for all past violations occurring in a 36 month period. These administrative penalties are in addition to any civil or criminal enforcement action that may take place. A Station Commander may also set forth a probationary period in addition to the suspension periods listed below.

Minor violation:

Missing or defective required equipment  
Failure to answer telephone call  
Failure to properly remove debris from crash scene  
Excessive response time  
Civil motor vehicle infraction by driver while on duty  
Other minor violation

1<sup>st</sup> offense – Written warning  
2<sup>nd</sup> offense – 2 day suspension  
3<sup>rd</sup> & subsequent offense – 7 day suspension

Serious violation:

Hiring unqualified driver  
Disrespect to public or officer  
Improperly releasing vehicle  
Refusing to service or tow vehicle  
Towing vehicle without permission  
Driver not trained and qualified within time limits  
Substantiated claim of missing property from a vehicle after an investigation

Other serious violation

- 1<sup>st</sup> offense – 7 day suspension
- 2<sup>nd</sup> offense – 14 day suspension
- 3<sup>rd</sup> & subsequent offense – 30 day suspension

Major violation:

- Lapse of required insurance
- Failure to have required number of operational trucks
- Causing unnecessary damage to vehicle
- Criminal violation by driver while on duty
- Charging more than regulated rates
- Other major violation

- 1<sup>st</sup> offense – 30 day suspension
- 2<sup>nd</sup> offense – 60 day suspension
- 3<sup>rd</sup> offense – removal from all Station Tow Company List

**Responsibilities of the Troop Commander**

The Troop Commander will ensure the effectiveness of the towing process by monitoring personnel under his command. The Troop Commander, or his/her designee, as Troop Tow Officer will:

- Perform random line inspections;
- Order an immediate indefinite suspension without advance notice (until such time as the deficiencies have been satisfactorily corrected) for an event where a tow company's actions resulted in a threat to public safety.
- Hold and preside over hearings relative to the appeal of a Station Commander's decision or suspension. The Troop Tow Officer may preside over appeal hearings at the discretion of the Troop Commander.
- Notify the Tow Company in writing of all decisions.
- Ensure that each Station Commander maintains all records and Tow Service Agreements required by this procedure.

**Responsibilities of the Tow Company**

Tow companies wishing to be included and/or remain on a Station Tow Company List agree to the following:

- Satisfy all application requirements;
- Have personnel available 24 hours a day, seven days a week, to tow, service, and release vehicles or property within a reasonable period of time;
- Maintain tow records for a minimum of 18 months;

- Submit a "Weekly Tow and Service Report" to the Station Commander;
- The Massachusetts State Police is not financially responsible for any direct or indirect expenses arising from any tow and/or related service, unless specifically agreed to in accordance with this policy;
- Not to remove any vehicles from a road or state highway, unless specifically authorized by the State Police or another duly authorized agency;
- To obtain authority in the manner decided by the Station Commander before releasing a vehicle impounded because of an active or on-going investigation;
- To answer routine calls for service, in addition to towing, and shall not refuse to remove or service any vehicle, if capable without just cause;
- Each responding tow truck will be required to have addition equipment for the category which they have applied and been approved. The Commercial Vehicle Enforcement Section (CVES) shall provide a list of required equipment for each category and shall update the list when necessary. In addition, the tow truck operator will be reasonably responsible for clearing the roadway of any debris and removing such debris from the scene;
- Comply with all federal, state, and local laws, General Order TRF-09 and the Department of State Police Tow Service Agreement; Department of Telecommunications and Energy regulations; Federal Motor Carrier Safety Regulations and any Incident Management Response plans or agreements;
- All Category III companies shall maintain a Department of Transportation Federal Safety Rating of "Satisfactory";
- Maintain a current list of drivers and notify the Station Commander, or his designee, of any newly hired personnel within 24 hours of their application;
- No tow company shall be directly involved in the towing related business of any other tow company on the same list. Directly involved shall mean that no company shall have any interest, financial or otherwise on matters involving (but not limited to): business licenses, insurance, truck or equipment ownership and or employees;
- Storage facilities leased or and shared with another, shall only be approved if the owner charges for the space on a flat rate rather than a vehicle-by-vehicle basis;
- The sale or transfer of the controlling interest in a company shall immediately cancel the status of said company on all Station Tow Company Lists. The new owner may apply for inclusion on the appropriate tow lists;
- Any criminal conviction of an owner or employee, within the last seven years, involving: stolen or embezzled vehicles, fraud related to the towing business, stolen property, crimes against morality or crimes against the person, shall be grounds for removal from all Station Tow Company Lists.

- Any company or agent thereof, which agrees to provide towing and/or related services, is expressly prohibited from offering anything of value (including, but not limited to, money, tangible or intangible personal property, food, beverage, loan, promise service, or entertainment) for the direct or indirect benefit of a member of the State Police. This requirement is in keeping with M.G.L. c. 22C, which prohibits the acceptance of such gifts.

*Tow companies must designate under which category or categories they wish to be considered, according to the following minimum requirements:*

- **Category I** – Passenger Automobile Towing and Service: Tow companies wishing to tow vehicles with a GVWR of up to 15,000 pounds must be properly equipped and have:

- 1) 2 tow trucks, each 11,000 GVWR minimum chassis, with dual 8,000 pound winches , a wheel lift, and equipment for towing motorcycles ;
- 2) 1 flatbed car carrier, 17,500 GVWR minimum, with a winch, minimum 50 feet of winch cable and an additional 50 feet carried in the vehicle, and a wheel lift for a second vehicle.

- **Category II** - Light Commercial Vehicle Towing and Service. Tow companies wishing to tow vehicles over 15,000 GVWR which do not contain hazardous materials or hazardous substances:

- 1) 1 tow truck, 33,000 GVWR minimum chassis, 25 ton hydraulic boom capacity, dual 25 ton winches, under-reach axle lift, capable of towing a fully loaded tractor-trailer.

- **Category III** – Commercial Vehicle Towing / Recovery / Hazmat: Tow companies that have, in addition to Category I and II requirements, sufficient auxiliary equipment to upright overturned vehicles and perform other commercial vehicle and cargo recovery operations:

- 1) 2 minimum, ten wheel tow trucks, 30 ton hydraulic boom capacity, twin line winches, and under-reach axle lift;
- 2) 1 minimum, six wheeled tow trucks, 25 ton hydraulic boom capacity, twin line, and under-reach axle lift;
- 3) 2 flatbed car carriers, 17,500 GVWR minimum, with wheel lift capacity for a second vehicle;
- 4) 1 air bag recovery system and immediate access to;
  - 1 25 ton sliding axle trailer (Landoll-style)
  - 1 tractor
  - 1 front-end loader
  - 1 fork lift
  - 1 set tandem wheels
  - 1 minimum 50 ton rotator tow truck

**NOTE:** In the event that a particular troop lacks a tow company with the above requirements for Category III Towing/Recovery, the Trooper Commander shall select the most appropriate tow companies using the above requirements as a guideline.



The minimum response standards for Category I tows are:

- 10-20 minutes response time to all limited access highways;
- 10-25 minutes response time to all other urban locations;
- 15-45 minutes response time to all other rural locations.

All tow company drivers shall meet the following minimum standards:

- Hold an active license for the required vehicle class;
- Hold a valid medical certificate;
- Successfully participate in a drug and alcohol screening program (for CDL drivers);
- Be trained to properly operate the necessary equipment;
- Hold a Massachusetts Hydraulic/Crane License and, general OSHA safety training (for all Category III employees) One supervisor (Category III company only) shall be HAZARDOUS WASTE WORKER certified (HAZWOPPER) ;
- Obtain tow operator certification within six months of employment, for the level of tow classification applied for, from the Towing & Recovery Association of America or an organization whose training conforms to the TRAA curriculum and is approved by the Commercial Vehicle Enforcement Section. Any organization wishing to be approved by the CVES shall submit a copy of their curriculum, instructor qualifications, training material, practical and written examination to the CVES for evaluation.
- Interact with the State Police and the public in a professional and courteous manner. During any Category III operation, the State Police Commercial Vehicle Enforcement Commanding Officer or designee must be consulted and advised of all actions and decisions relative to the scene. Any behavior deemed unsafe or discourteous will be considered grounds for immediate removal from the scene and may result in further action by the Station and/or Troop Commander.

The tow company shall provide adequate security of vehicles and property at the place of storage. A fenced and lighted area shall be provided, with indoor storage available. The tow company is solely responsible for the reasonable care, custody, and control of any property contained in towed or stored vehicles.

- The primary storage facility shall normally be at the same location as the business address.
- If at another location, there shall be no charge for any additional distance traveled to and from a secondary location.
- All companies shall have storage capabilities within the Commonwealth of Massachusetts. Before using new storage facilities that are not listed on the application, the tow company shall obtain the Station Commander's approval and furnish the address of the storage facility to the Station Commander.

Tow companies shall maintain the following minimum levels of insurance:

- \$750,000 combined single limit bodily injury and property damage;



- \$100,000 Garage Keeper's liability;
- Worker's Compensation insurance;
- \$1,000,000 General Liability insurance shown on MCS-90 form (Category III companies only);
- Proof of insurance shall be in the form of a certificate of insurance. Policy expiration or cancellation shall constitute immediate grounds for a company's removal. The insurance policy shall provide for immediate notification to the Station Commander in the event that the insurance policy has expired or has been cancelled.

In the event that a member of the State Police determines that a tow is not required in any given situation and cancels tow services subsequent to a request, no charges shall incur as a result of said cancellation. Instead, the tow company shall be placed next on the service list. The state police has the absolute discretion to cancel any requested tow or related services for any reason.

Any tow company which presently appears on an existing tow list shall satisfy all State Police Tow requirements within one (1) year after the promulgation of said requirements. Any current tow company's failure to satisfy any requirement(s) shall be grounds for its immediate removal from the tow list.

**The inclusion on a Station Tow Company List of the Massachusetts State Police does not constitute, in any manner, a legal agreement or contract. It should be understood that a company's inclusion on a list does not create a property interest of any kind. The Massachusetts State Police have the absolute discretion and reserve the right to remove, FOR ANY REASON, any company on a Station Tow Company List. These "agreements" are not contracts but are "understandings" between entities.**

# MASSACHUSETTS STATE POLICE APPLICATION FOR NO PREFERENCE TOW LIST

Applicant's Firm Name:	
Firm Address:	
City:	Zip:
County:	Telephone:
Storage Facility Address:	

List all names and addresses that the above company has used in the past ten years.

Company Name	Address

List owner(s) and persons holding legal or financial interest.

Name	Date of Birth	Street	City	Telephone

List tow vehicles.

Make	Year	VIN#	GVWR

List Tow Vehicle Operators:

Name (Last/First/Middle)	Date of Birth	License Number	State
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

Liability Insurance      For bodily injury per occurrence amount \$ \_\_\_\_\_  
    For property damage per occurrence amount \$ \_\_\_\_\_

Insurance Company:	Phone:
Address:	
Agent:	Phone:
Address:	
Policy Number:	

Garage Keeper's Liability (for care, custody and control) per occurrence amount \$ \_\_\_\_\_

Insurance Company:	Phone:
Address:	
Agent:	Phone:
Address:	
Policy Number:	

Worker's Compensation

Insurance Company:	Phone:
Address:	
Agent:	Phone:
Address:	
Policy Number:	

Have you ever applied for a State Police Tow List and been denied? If yes, where and why were you denied?


Circle the list(s) for which you want to be considered:

Service Calls and Light Duty Tows      Heavy Duty Tows      Recovery Operations

I request that I be allowed to be included in the No Preference Towing List used by the Massachusetts State Police. I agree to abide by all applicable laws of the Federal Government, the Commonwealth of Massachusetts and the State Police Tow Agreement.

Applicant's Signature

Title

Date